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AN ACT

RELATING TO REAL ESTATE TRANSACTIONS; ESTABLISHING DEADLINES FOR THE FUNDING OF REAL ESTATE TRANSACTIONS; PROVIDING FOR ENFORCEMENT; AMENDING AND ENACTING SECTIONS OF THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-21-2 NMSA 1978 (being Laws 1983, Chapter 86, Section 2, as amended by Laws 2001, Chapter 251, Section 1 and by Laws 2001, Chapter 264, Section 1) is amended to read:

"58-21-2. DEFINITIONS.--As used in the Mortgage Loan Company and Loan Broker Act:

A. "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

- (1) preparation of deeds, mortgages,

1 promissory notes, deeds of trust, real estate contracts,
2 assignments or other documents incidental to the sale as
3 permitted by law;

4 (2) calculations and disbursements of
5 prorated taxes, insurance premiums, utility bills and other
6 charges incidental to the sale;

7 (3) preparation of sellers' and buyers'
8 closing statements;

9 (4) supervision of signing of documents;

10 (5) collection and disbursement of down
11 payments, commissions of real estate licensees, fees and
12 other charges pursuant to a sales agreement; and

13 (6) recordation of documents;

14 C. "division" means the financial institutions
15 division of the regulation and licensing department;

16 D. "director" means the director of the financial
17 institutions division of the regulation and licensing
18 department;

19 E. "dwelling" means a residential structure,
20 including a home, individual condominium unit, manufactured
21 home or modular home, that contains one to four units and is
22 permanently attached to real property;

23 F. "lender" means a person or government agency
24 making a mortgage loan;

25 G. "loan broker" means any person who acts as a

1 finder or agent of a lender or borrower of money for the
2 purpose of procuring a mortgage loan, or both;

3 H. "mortgage loan" means a loan secured by a
4 dwelling permanently affixed to real property; and

5 I. "mortgage loan company" means a person who,
6 directly or indirectly:

7 (1) holds himself out as being able to serve
8 as an agent for any person in an attempt to obtain a mortgage
9 loan;

10 (2) holds himself out as being able to serve
11 as an agent for a person who makes mortgage loans; or

12 (3) holds himself out as being able to make
13 mortgage loans."

14 Section 2. A new section of the Mortgage Loan Company
15 and Loan Broker Act is enacted to read:

16 "EXECUTION OF DOCUMENTATION FOR REAL ESTATE
17 TRANSACTION.--A closing agent for any purchase of real
18 property shall not require or permit any party to such a
19 transaction to execute documentation necessary to finalize
20 that transaction unless the consideration necessary to
21 complete that transaction has been previously delivered to
22 the seller or to the closing agent."

23 Section 3. A new section of the Mortgage Loan Company
24 and Loan Broker Act is enacted to read:

25 "FUNDING OF REAL ESTATE TRANSACTIONS--ENFORCEMENT.--

1 A. Unless the consideration necessary to complete
2 a purchase of real property has been previously delivered to
3 the seller or to the closing agent, a lender shall comply
4 with the following:

5 (1) funds in an amount sufficient to
6 complete the purchase of real property shall be provided to
7 the closing agent at the same time the lender provides to the
8 closing agent the documentation to be reviewed and executed
9 by the parties to the real estate transaction; and

10 (2) within two business days from the time
11 the lender receives copies of all previously required
12 documentation to the real estate transaction, including
13 documentation executed by the parties to that transaction,
14 the lender shall:

15 (a) authorize the closing agent to
16 record with the county clerk all documents necessary to
17 complete the real estate transaction and release the proceeds
18 of the real estate transaction in accordance with agreed upon
19 escrow instructions;

20 (b) advise the closing agent of any
21 funding conditions, as set forth in the lender's escrow
22 instructions, that have not been satisfied and instruct the
23 closing agent in writing what is to be done with any of the
24 lender's funds held in escrow; or

25 (c) advise the closing agent that the

1 documentation for the real estate transaction does not
2 satisfy the lender's escrow instructions, specify the manner
3 in which that documentation does not satisfy those
4 instructions and instruct the closing agent in writing what
5 is to be done with any of the lender's funds held in escrow.

6 B. In the event a lender does not comply with the
7 requirements of Subsection A of this section, unreasonably
8 refuses to approve the documentation necessary to complete a
9 real estate action or unreasonably delays authorization of
10 the recordation of closing documents and release of proceeds
11 of a real estate transaction, the director of the division
12 may, upon receipt of a complaint and in accordance with the
13 procedures set forth in the Mortgage Loan Company and Loan
14 Broker Act, suspend or revoke any state registration or
15 license issued to the lender for a period not to exceed one
16 year."

17 Section 4. REPEAL.--Section 48-7-10.1 NMSA 1978 (being
18 Laws 2003, Chapter 200, Section 1) is repealed.

19 Section 5. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2006. _____

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